

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

NEHAD THAHER,

Defendant.

17 Cr. 302 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Defendant Nehad Thaher's motion for reconsideration of the Court's June 8, 2020 Opinion and Order denying his motion for compassionate release (Dkt. #253); the Government's opposition letter brief (Dkt. #254); and Mr. Thaher's supplemental submission (Dkt. #255). For the reasons set forth herein, the motion is denied.

The Court incorporates by reference the factual findings and legal analysis in its June 8 Opinion, in which it denied without prejudice Mr. Thaher's original motion for compassionate release and requested instead that he apply to the Bureau of Prisons ("BOP") for a furlough. *See United States v. Thaher*, No. 17 Cr. 302-3 (KPF), 2020 WL 3051334, at *1 (S.D.N.Y. June 8, 2020) ("*Thaher I*"). Several developments have emerged since then. Mr. Thaher applied for a furlough and was denied; the proffered bases for that denial, plus additional information about Mr. Thaher's medical conditions, underlie his reconsideration motion. (Dkt. #252 at 1-2).

There have also been significant developments in the BOP's efforts to combat the spread of COVID-19 at FCI Elkton, where Mr. Thaher is housed. At the time of *Thaher I*, the Court observed:

According to the information maintained by the BOP, 446 inmates and 7 staff members are listed as currently “positive” for the COVID-19 virus; 9 inmates have died from the virus; and 153 inmates and 46 staff members are listed as having “recovered” from the virus. See <https://www.bop.gov/coronavirus/> (accessed June 8, 2020). The degree and speed of transmission of the virus at FCI Elkton has dwarfed other BOP facilities, which suggests that, however well-thought-out, the BOP’s COVID-19 Modified Operations Plan is simply not working at FCI Elkton.

Thaher I, 2020 WL 3051334, at *5. Indeed, sharing the Court’s concerns, a district judge in the Northern District of Ohio identified a medically vulnerable subclass at FCI Elkton and ordered the BOP to “to evaluate each subclass member’s eligibility for transfer out of Elkton through any means, including but not limited to compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough” within two weeks. (*Wilson v. Williams*, No. 4:20 Civ. 00794 (JG) (N.D. Ohio), Dkt. #22 at 20). The day after *Thaher I* was issued, on June 9, 2020, the Sixth Circuit vacated the district court’s preliminary injunction on the ground that Petitioners were unlikely to succeed on the merits. See *Wilson v. Williams*, 961 F.3d 829 (6th Cir. 2020). This Court is unaware of how many, if any, members of the medically vulnerable subclass were transferred out.

Since then, the progress of the virus at Elkton has ebbed and flowed. Significantly for purposes of the present motion, the virus is at an ebb: As of today’s date, the BOP reports 3 inmates and 2 staff members being listed as currently “positive” for the COVID-19 virus; no additional inmates have died from the virus; and 970 inmates and 51 staff members are listed as having

“recovered” from the virus. See <https://www.bop.gov/coronavirus/> (accessed August 31, 2020). The Court means not to minimize the suffering of those inmates and staff members who have contracted the virus, as well as their families. But the principal reason for the Court’s consideration of compassionate release in this case was the pervasiveness of the virus among the inmate population; with the virus under control, the Court’s concerns about risk of harm to Mr. Thaher are similarly reduced. Moreover, the new information submitted by defense counsel about Mr. Thaher’s medical conditions does not change the calculus; as the Government notes, “thalassemia was listed by the CDC as a health condition that ‘might’ increase the risk of severe illness from COVID-19 based on limited evidence, and high cholesterol was not listed in the CDC’s guidance at all.” (Dkt. #254 at 2). See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 31, 2020).

In short, the public health concerns that animated the Court’s prior opinion have been resolved such that the Court does not believe that Mr. Thaher has demonstrated “extraordinary and compelling reasons” that warrant compassionate release, nor, on the facts of this case, that “such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A)(i). Accordingly, Mr. Thaher’s motion for reconsideration is denied.

SO ORDERED.

Dated: August 31, 2020
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge